IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11990 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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INDRABEN JAYVANTSINH - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR MEHUL S SHAH for Petitioner(s) : 1
MR AY KOGJE, AGP for Respondent(s) : 1 - 2.
None for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 17/01/2007

ORAL JUDGMENT

1. The three successors of one Jayvantsinh, who claims himself to be son of Jatubha, have filed this writ application challenging the order

dated 13.9.93 passed by the Revenue Tribunal in Revision Case No. TEN.B.A 290/93 whereunder the learned Revenue Tribunal has partly allowed the appeal and has required the Mamlatdar cum ALT to give choice to the petitioners to surrender any part of the land.

2. The short facts necessary for disposal of the present writ application are that one Jatubha was holding as much as 183 acres and 9 gunthas land in village Modwana. On the specified date as provided under Gujarat Agricultural Lands Ceiling Act, 1960, the said Jatubha filed his return cum statement and submitted to the authority that he had two major sons, namely, Chandubha, aged 42 years and Mahipatsinh aged 35 years, therefore, total three units were required to be given, one to Jatubha and one each to his sons. In his return, he did not submit that he had third major son, namely Jayvantsinh. The Mamlatdar cum ALT in Ceiling Case No. 31/76-77 in his order dated 29.12.80 held that the said Jatubha was possessed of 16 acres and 9 and half gunthas surplus land. It is

to be seen that Jatubha did not challenge the said order by filing an appeal nor even Jayvantsinh who was claiming to be major son ever challenged that order before any authority saying that he being third son of Jatubha was entitled to one unit and as such, no land could be declared surplus. The said order dated 29.12.80 came to be challenged by one Jagjivan, a transferee, in Appeal No. 96 of 1981. The said appeal was allowed on 14.2.81 and the matter was remanded to the Mamlatdar cum ALT for deciding the matter afresh. On 31.1.86, the Mamlatdar cum ALT again decided the matter and held that Jatubha and his family were possessed of surplus land to the extent of 16 acres and 19 gunthas. It is to be noted that Jatubha died on 5.7.83. Legal heirs cum successors of Jayvansinh had filed Appeal No. 4 of 1991 before the Deputy Collector who disposed of the same on 19.8.91 observing that the same had become infructuous as the order dated 29.12.80 was set aside. The order dated 31.1.86 was taken in appeal by heirs of Jayvantsinh, the appeal

was registered as Appeal No. 51 of 93 and the same came to be dismissed on 8.2.93 as time barred. Being aggrieved by the said order, heirs of Jayvantsinh [present petitioners] filed Revision Case No. 292 of 1993 which was finally decided on 30th September, 1993. The Revenue Tribunal directed the Mamlatdar cum ALT to give choice for surrender of land to the legal representatives. Being aggrieved by the said order passed by the Revenue Tribunal, the petitioners are before this Court.

3. Shri Mehul S. Shah, learned counsel for the petitioners submits that if on 1.4.76, that is, the specified date, Jayvantsinh was also a major son of Jatubha, then no land could be declared surplus. According to him, father Jatubha and three sons, each would be entitled to hold 54 acres each which would mean that the family would be entitled to hold 216 acres and as the land was 183.09 acres, nothing could be declared surplus. He submits that once the Revenue Tribunal held that the orders could not be passed in absence of legal representatives of

Jayvantsinh, then instead of limiting the remand to the extent of giving choice, the Revenue Tribunal should have remanded the matter in wholesale for reconsideration of everything.

4. It is also submitted by the learned counsel for the petitioner that in Appeal No. 4/91, it was clearly mentioned that Jayvansinh was major on 1.4.76 and as there was no contrary statement to the said fact, the fact should be accepted to be true.

5. Shri A.Y. Kogje, learned AGP for the State on the other hand submits that the return which was filed by Jatubha did not mention about the third son nor did it say that Jatubha had three major sons. According to him, Jatubha himself had clearly stated that he had two sons, namely, Chandubha and Mahipatsinh and even when the inquiry was going on, he appeared before the Mamlatdar cum ALT and had clearly admitted that he had two major sons. His submission is that if father himself did not disclose about the majority of his own third son, then there was no reason for the authority to hold that the

family consisted of three major sons and the father. His submission is that in absence of positive proof about the fact that Jayvansinh was major on 1.4.76, the said Jayvantsinh would not be entitled to one unit of 54 acres.

6. I have gone through the orders passed by the authorities.

7. The facts which float on the surface of the record clearly show that Jatubha had made statement that he had two major sons, namely Chandubha and Mahipatsinh. He had given age of his two sons as 42 years and 35 years respectively. It is unbelievable that a father would forget about the third son and about his age also. According to the present petitioners, Jayvantsinh was aged about 37 years on 1.4.76. It is not even the case of the petitioners that Jatubha suffered with senile dementia or disease of amnesia, i.e. forgetfulness and he could not remember about the third son. The conduct of Jatubha in not showing Jayvantsinh as major son would clearly show that Jayvantsinh was not major on 1.4.76. Jatubha had accepted

the judgment passed by Mamlatdar cum ALT. Jayvantsinh, if was major son and was knowing about the ceiling proceedings, then he himself ought to have appeared either before the Mamlatdar cum ALT to apprise Mamlatdar of the true facts or in any case, he was required to file an appeal against the order dated 29.12.80 when for the first time, land was declared surplus. Conduct of Jayvantsinh in not taking any action against the orders which were passed against his interest would also speak against him. Ordinary human conduct would not rely upon such cock and bull story that father did not mention about the major son and major son himself did not challenge the order which was against the interest of the major son or the family.

8. Mention of the age or date of birth of Jayvantsinh in the appeal memo would only amount to a ground to challenge some order, but would not mean that it was the final proof of the fact, because, submission of a fact is not proof of the fact. Age of a person, date of the birth

are required to be proved like ordinary facts. In support of the submission that Jayvantsinh was born in the year 1939, widow of Jayvantsinh had filed her affidavit. Unfortunately, up to 5.7.83, when Jatubha died, nobody filed any affidavit that Jayvantsinh was major. Jayantsinh, during his lifetime did not file any affidavit that he was major and was entitled to one unit. Brothers did not file any affidavit to say, suggest or prove that Jayvantsinh was major on 1.4.76. No records/revenue records or panchayat records have been filed to prove that Jayvantsinh was major on 1.4.76. I will be justified in taking note of the fact that the Gujarat Panchayats Act came into force in 1961 and elections were held in accordance with the provisions of the Panchayats Act and voters lists were required to be prepared. If in 1976, Jayvantsinh was aged about 37 years, then somebody on his behalf could file a copy of the voters list to show that he was major on 1.4.76. It is also to be seen that in the ration card of Jatubha's family, Chandubha and Mahipatsinh are

shown to be major sons, ration card does not mention about 3rd major son. Jayvantsinh's family had also not filed any other document to prove that Jayvantsinh was major on 1.4.76. If the fact that Jayvantsinh was major on 1.4.76 is not proved, then successors of Jayvantsinh cannot say that they were entitled to one unit on 1.4.76. The authority was justified in making remand to the limited extent for giving choice of the land.

9. The petition deserves to and is accordingly dismissed.. Rule is discharged. No costs. Interim relief, if any, is vacated.

10. The Mamlatdar cum ALT is hereby directed to give choice of land to the land holder by issuing a notice and dispose of the matter within six months from the date of receipt of copy of this order. Let copy of this order be supplied to the leaned counsel for the State for its onward communication to the Mamlatdar cum ALT to take appropriate steps in accordance with law.

[R.S. GARG, J.]

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